THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12459 OF 2005

Dated: 12th September, 2005.

Between:

K.V.K. Ranga Rao … Petitioner

And

1. The District Collector, Eluru,

West Godavari District and two others. … Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12459 OF 2005

ORDER :

This writ petition is filed seeking a declaration that the action of the respondents 1 and 2 in not allotting Shop No.278 of Nawabpalem village, Tadepalligudem Mandal, West Godavari District to the petitioner in spite of the fact that he was declared as successful bidder in the auction held on 2/3-6-2005 and in proposing to allot the said shop to the 3rd respondent as arbitrary, illegal and contrary to the provisions of A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules').

The facts, in brief, are as under:

The District Collector, Eluru (the 1st respondent herein) issued a Notification dated 26-5-2005 inviting tenders from the intending tenderers for grant of lease of right to sell Indian Liquor and Foreign Liquor by shop for a period of one year i.e., from 1-7-2005 to 30-6-2006 by way of public auction scheduled to be conducted on 2-6-2005. The petitioner submitted his sealed tender for Shop No.278 located in Nawabpalem Village of Tadepalligudem Mandal, W.G. District on 1-6-2005 well within the time fixed, duly complying with all the requirements as specified under the Tender Notification. On 3-6-2005 the sealed tenders were opened and it was found that the writ petitioner was the highest bidder in respect of Shop No.278 and accordingly he was declared as the successful tenderer for a sum of Rs.11,00,111/- and the auctioning authority has obtained his signature in the confirmation register. The petitioner has also deposited a sum of Rs.3,66,705/- towards 1/3rd of the lease amount on 3-6-2005. However, the further steps were not taken by the respondents, but on the other hand he was informed by the respondents 1 and 2 that the sealed tender submitted by the third respondent which could not be opened on 3-6-2005 would be opened on 6-6-2005. Accordingly, the tender of the third respondent was opened on 6-6-2005 at the camp office of the 1st respondent and having found that the third respondent has offered Rs.13,09,000/-, he was declared as the successful bidder in respect of the Shop No.278 and the respondents 1 and 2 were contemplating to issue the licence in his favour. Consequently, the petitioner was asked to take back the 1/3rd bid amount deposited by him. In the circumstances, this writ petition has been filed contending that having declared the petitioner as the successful bidder on 3-6-2005, it is not open to the respondents 1 and 2 to open the tender of the 3rd respondent on the subsequent date and to consider his bid and the

said action being contrary to the procedure prescribed under the statutory rules is arbitrary and illegal.

In the counter-affidavit filed on behalf of the respondents 1 and 2, the fact that the petitioner has satisfied all the requirements specified under the auction notice and that he was declared as the highest tenderer for Shop No.278 of Nawabpalem village for Rs.11,00,111/- and he was permitted to sign in the confirmation register has not been denied. It was also admitted that the petitioner has furnished the demand draft towards 1/3rd of the lease amount. However, it was explained that the authorities have received 2,127 tenders in respect of 260 shops notified and the entire process was required to be completed on 3-6-2005 itself to prevent the revenue loss to the Government. In the process, there was lot of pressure of work and it could not be detected that two persons with same name presented tenders in respect of Shop No.278 of Nawabpalem. Apart from the third respondent, Sri Pulla Satyanarayana, S/o. Pulla Rao, another person with the same name i.e., Pulla Satyanarayana S/o. China Ramanna submitted his tender for the same shop. However, Pulla Satyanarayana, S/o. China Ramanna failed to attend the auction on 3-6-2005 and he did not present the demand drafts towards 10% of the upset price. The third respondent Sri Pulla Satyanarayana, S/o. Pulla Rao has attended the auction and presented the demand drafts towards E.M.D. along with six others. Thus, all the seven tender covers were opened before them and the remaining ten tender covers were bundled and kept aside duly making an endorsement on the covers "Absent". Out of the seven tenders opened, the amount offered by the petitioner herein was found to be the highest i.e., Rs.11,00,111/-. Hence, he was declared as the highest tenderer by the auctioning authority. Later on 6-6-2005 Pulla Satyanarayana S/o. Pulla Rao submitted a representation stating that he has filed tender for Shop No.278, Nawabpalem and participated in the auction and presented demand draft towards 10% of upset price. But his tender was not opened and the tender of a different person i.e., Pulla Satyanarayana, S/o. China Ramanna was opened and the same was rejected as the amount quoted in that tender was only Rs.8,06,999/-. He further represented that the demand draft furnished by him was also attached to the said tender which was rejected. He also stated that since he quoted Rs.13,09,000/- in his tender, the same may be opened and confirmed as it is the highest offer. When the other person Pulla Satyanarayana, S/o. China Ramanna

has been enquired in this regard, he stated that he filed tender only for Rs.8,06,999/- and that he had not attended the auction conducted on 3-6-2005 nor deposited 10% of upset price towards E.M.D. As it was a clerical error which took place due to rush of work, it was decided by the auctioning authority to open the tender of the 3rd respondent Pulla Satyanarayana, S/o. Pulla Rao in the presence of the petitioner herein and as such he was informed about the same and the tender was opened in his presence and found that the amount offered therein was Rs.13,09,000/-. Hence, the tender of the said Pulla Satyanarayana, S/o. Pulla Rao has been confirmed to safeguard the Government Revenue.

A separate counter-affidavit has been filed by the third respondent reiterating the abovesaid facts as narrated in the counter-affidavit of the respondents 1 and 2.

I have heard the learned Counsel for both the parties and perused the material on record.

It is to be noted that in exercise of the powers conferred by Section 72 read with Sections 17, 28 and 29 of the A.P. Excise Act, 1968, and Ordinance 5 of 2005, the Governor of Andhra Pradesh made the Rules called the A.P. Excise (Lease of Right of Selling by Shop and Conditions of Licence) Rules, 2005 (for short, 'the Rules'). The said Rules issued under G.O.Rt.No.998, Revenue (Ex.II) Department, dated 24-5-2005, are made applicable for the grant of privilege by shop, conditions governing thereof and transport of Indian Liquor and Foreign Liquor by the leaseholder. As per the said Rules, the lease of right to sell Indian Liquor and Foreign Liquor by shop shall ordinarily be granted by inviting sealed tenders from the public. As per Rule 14 of the Rules, the tenders shall be submitted by the tenderer in a sealed envelope addressed to the auctioning authority on or before the last date and time notified for receipt of tenders along with the particulars specified thereunder. Further, as per Sub-rule (5) of Rule 14, the tenderer at the time of auction shall furnish as earnest money, a sum equal to 10% of upset price fixed and notified by the auctioning authority for each shop notified for auction in the form of demand drafts obtained in favour of the auctioning authority or in favour of the Commissioner of Prohibition & Excise before opening the tender. If the tenderer

does not furnish earnest money, such tender shall be forthwith rejected by the auctioning authority before opening the sealed tenders offered for that shop. As per Sub-rule (6), the auctioning authority shall open the sealed tender for each shop notified for auction and the highest tender may be accepted if the lease amount offered is higher than the upset price notified for the shop and the rest of the tenders shall be rejected. As per Rule 18 the auction purchaser shall pay a sum equal to 1/3rd of the lease amount for the shop on the day of the auction immediately after the acceptance of the tender. Under Rule 19 of the Rules, the auction purchaser shall also submit a Bank Guarantee or Fixed Deposit Receipt for the remaining 2/3rd of the lease amount within seven days of knocking down of the shop in his favour and obtain the licence. Rule 22 provides that after tendering the deposit and advance amount, it shall be the duty of the lessor and the auction purchaser to execute a counterpart agreement in conformity with the tenor of the lease in Form A-6 on the stamp paper of the requisite value as per the provisions of the Indian Stamp Act, 1899 before taking out a licence for the sale of Indian Liquor and Foreign Liquor. Such counter-part agreement shall come into force with effect from 1st July of the year to which the auction relates in respect of leases auctioned on or before 30-06-2005 and in case where the auction takes place on or after the 1st July, the counterpart agreement shall come into force from the date of auction. It is also relevant to note that Rule 23 specifically provides that the lease granted to the auction purchaser shall not take effect until he obtains a licence from the Prohibition & Excise Superintendent and that it shall be the responsibility of the auction purchaser to execute the counterpart agreement referred to in Rule 22 and also complete other formalities contemplated in Rules 17, 18 and 19 within the time specified and obtain a licence in respect thereof.

In the case on hand, it is not in dispute that both the writ petitioner as well as the third respondent have satisfied the eligibility criteria as prescribed under the Tender Notification. Both of them submitted their tenders in sealed envelopes within the time prescribed. It is also not in dispute that the writ petitioner as well as the third respondent were present on the date of the auction and furnished the earnest money deposit as required under Sub-rule (5) of Rule 14 of the Rules. However, it appears that another bidder with the same name as that of the third respondent also submitted his bid quoting the price of Rs.8,06,999/-. Admittedly, the third respondent

was physically present in the auction held on 3-6-2005 and duly furnished the earnest money deposit, whereas the other person did not furnish the earnest money deposit nor he was present on the date of the auction. However, by mistake, his bid was treated as the bid submitted by the third respondent and since he quoted only Rs.8,06,999/- the writ petitioner who quoted Rs.11,00,111/- was declared as the successful bidder . On the other hand, the writ petitioner was considered to be ineligible tenderer and his bid was not opened. Thus, the envelope submitted by the third respondent quoting Rs.13,09,000/- though highest could not be opened on 3-6-2005, apparently due to a mistake on the part of the subordinate staff of the respondents 1 & 2. The petitioner has not filed any Reply contradicting the plea of the respondents 1 & 2 that it was only on account of an error on the part of the subordinate staff, the bid of the third respondent could not be opened on 3-6-2005. When the said fact was brought to the notice of the respondents 1 & 2 on 6-6-2005, the bid of the third respondent was opened in the presence of the writ petitioner and it was found to be the highest. Nothing has been placed before this Court to contradict the version of the respondents 1 and 2 nor any specific allegations were made against the respondents 1 and 2 attributing *mala fides*. In the circumstances, I do not find any reason to disbelieve the explanation offered by the respondents 1 and 2 for their failure to open the bid of the third respondent on 3-6-2005. Obviously, it was only a *bona fide* mistake on the part of the official respondents.

May be that, the writ petitioner was declared as the highest bidder on 3-6-2005 and his signature was also obtained in the confirmation register as prescribed under Rule 16 of the Rules. But, that itself does not confer any vested right on the writ petitioner. A combined reading of Rules 17, 18 and 19 as well as Rules 22 and 23 would undoubtedly show that the mere signature in the Confirmation Register is not enough. The contract can be said to be concluded only after all other requirements are complied with resulting in execution of a counterpart agreement. Except the 1/3rd of the lease amount paid by way of demand draft on 3-6-2005, admittedly the writ petitioner has not paid the remaining amount of 2/3rd nor the counterpart agreement has been executed. In the circumstances, there was no concluded contract between the writ petitioner and the respondents 1 and 2. Having realised the error, the respondents 1 and 2 have rightly opened the bid of the third

respondent in the presence of the writ petitioner. Hence, it cannot be said that the writ petitioner was prejudiced in any way and the entire procedure adopted by the respondents 1 and 2 was transparent and absolutely there is no reason to hold that the impugned action is arbitrary, illegal or in contravention of the provisions of the statutory rules.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

Needless to mention that the interim order granted pending the writ petition shall stand vacated.

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12th September, 2005.

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